FILE COPY

No. 406

In the Supreme Court of the United States

OCTOBER TERM, 1948

UNITED STATES OF AMERICA, PETITIONER

v.

HARRY S. KNIGHT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX

CITATIONS

Cases:

United States statutes:

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 406

UNITED STATES OF AMERICA, PETITIONER

v.

HARRY S. KNIGHT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Third Circuit (R. 839),[1] reversing respondent's conviction in the District Court for the Middle District of Pennsylvania on the charge of abetting the trustee of a bankrupt estate in embezzling property of the estate and conspiring to do so.

[1] Pursuant to stipulation (R. 842), the printed record consists of the printed appendix to respondent's brief in the Court of Appeals (as enlarged by the proceedings in that court).

OPINIONS BELOW

The opinion of the District Court denying motions in arrest of judgment and for a new trial (R. 809-826) is not reported. The majority and dissenting opinions in the Court of Appeals (R. 829-838) are not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered August 13, 1948 (R. 839), and a petition for rehearing was denied October 13, 1948 (R. 840). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F.R. Crim. P.

QUESTION PRESENTED

The trustee of a bankrupt estate, pursuant to a plan of reorganization, transferred the entire assets of the estate to another company in exchange for a previously agreed upon cash consideration. By secret agreement with the transferee company, $3,000 of the consideration was paid through an intermediary to the trustee for his own personal use. The question presented is whether the trustee, by accepting this money for his own use and not accounting for it to the court as part of the consideration for the transfer, embezzled it from the bankrupt estate.

STATUTE INVOLVED

Section 29(a) of the Bankruptcy Act of July 1, 1898, c. 541, 30 Stat. 554, as amended (11 U.S.C. 52(a)), provides:

A person shall be punished by imprisonment for a period of not to exceed five years or by a fine of not more than $5,000, or both, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to the estate of a bankrupt which came into his charge as trustee, receiver, custodian, marshal, or other officer of the court.

STATEMENT

The first two counts of a 3-count indictment (R. 7-15) filed in the District Court for the Middle District of Pennsylvania charged one Robert Michael, trustee of the bankrupt estate of the Central Forging Company, with fraudulently appropriating $3,000 of the estate to his own use (count 1) and unlawfully transferring $3,000 of accounts receivable of the estate (count 2), in violation of Section 29(a) of the Bankruptcy Act, as amended, *supra*. Respondent Harry S. Knight and three other defendants, George Fenner, Homer Davis, and Donald Johnson, were charged in both counts as aiders and abettors of Michael. Count 3 charged all five of the above-named defendants with conspiring to commit the offenses described in the first two counts, in violation of Section 37 of the Criminal Code (now 18 U.S.C. 371). One Donald Reifsnyder was named as a "confederate" in all three counts, but not as a defendant, having died before the indictment's return (R. 415).

Michael pleaded guilty (R. 26), and became the Government's chief witness. Following a trial by jury, respondent Knight and Fenner were convicted on all counts, and Davis and Johnson were acquitted (R. 808). Respondent was sentenced generally to pay a fine of $1,000 (R. 827). On appeal by respondent alone, the Court of Appeals, one judge dissenting (R. 836-838), reversed his conviction on all counts and directed entry of a judgment of acquittal (R. 839).

The evidence adduced by the Government may be summarized as follows:

In December 1941, the defendant Johnson suggested to Michael that he apply to Johnson's father, then a judge of the District Court for the Middle District of Pennsylvania, for appointment as successor trustee of the Central Forging Company, Catawissa, Pennsylvania, which had for several years been the subject of a reorganization proceeding in that court (R. 27-30). Michael did so and received the appointment (R. 30-31). Shortly thereafter, pursuant to a further suggestion of Johnson, and with the court's approval, Michael engaged Donald Reifsnyder, the alleged "confederate," as his attorney (R. 32-35).

The Maxi Manufacturing Company, also located in Catawissa, manufactured the same products as the Central Forging Company (R. 40-41), was one of its substantial creditors (R. 696-697), and was

operating the Central Forging Company when Michael was appointed its successor trustee (R. 40). The defendant Fenner was the Maxi Company's general counsel (R. 579), the defendant Davis was its treasurer (R. 48), and respondent was a special attorney engaged by Maxi in connection with its interests in the Central Forging Company (R. 39, 395-396).

Following some preliminary negotiations in January and February 1942 between Michael and Reifsnyder and respondent, during which plans for the merger of the two companies were discussed (R. 38-42, 696-700), Reifsnyder told Michael that, since "it looked like * * * that merger would go through," they would have to decide upon "some way * * * to take care of Donald Johnson" (R. 57). In reply to Michael's query as to whether Reifsnyder meant splitting their fees with Johnson, Reifsnyder said he did not think that would be necessary, as he had "in mind another plan" whereby they "could set up certain funds which would be paid over to a third party and then come back for disbursement to Mr. Johnson" (R. 57). Reifsnyder added that he had discussed such a plan with respondent, who "was agreeable to going along on some proposition" (R. 58).

On February 17, 1942, Reifsnyder submitted to respondent a "revised plan of reorganization" (R. 715-718), under which the Maxi Company would pay to Central, in addition to $17,000 pre-

viously agreed upon as the consideration for Central's fixed assets, the value of Central's net current assets, to which Maxi would also take title. In computing the worth of the net current assets, the accounts receivable were evaluated at $23,534.50, which was their book value as of the end of 1941.[2]

On February 23, 1942, respondent submitted to Reifsnyder a re-draft of the foregoing plan, modifying it in minor particulars, but accepting the basic idea that Maxi would pay for, and take title to, Central's net current assets as well as its fixed assets (R. 719-724, particularly at R. 722-723).

On February 27, 1942 (R. 709), Michael and Reifsnyder filed with the court a "Proposal of a Revised Plan of Reorganization" (R. 704-708), according to which the Maxi Company was to take over all assets of Central of every description (R. 706), stockholders of Central would get nothing (R. 705), secured creditors of Central would receive 20%, and unsecured creditors 5%, of their claims in debenture bonds of Maxi (R. 706-707), and all administration expenses arising from the reorganization proceeding which might be allowed by the court "to be paid in cash by the Trustee" (R. 708). The plan was approved by Judge John-

[2] It was recognized, of course, that the value of the accounts receivable would change to some extent before consummation of the plan, but this factor was not considered important since fluctuations in the value of the accounts receivable would be accompanied by compensating fluctuations in cash, inventory, payables, etc., so that Central's net current position would remain steady over a period of a few months (see R. 698-699).

son on March 16, 1942, and ordered to be submitted to creditors and other interested parties for approval (R. 709-713).

On April 8, 1942 (R. 68), Michael, Reifsnyder, and respondent agreed upon $25,982.83 (R. 71, 703) as the amount "ultimately to be paid in cash [by Maxi] in addition to the $17,000" (R. 71). The figure $25,982.83 represented a net amount remaining after crediting Maxi with $421.50 for an item of expense previously paid by Maxi on Central's behalf (R. 71, 703), so that the total amount to be paid by Maxi for Central's net current assets was $26,404.33.

It was also agreed on this occasion that the amount of money which "was to come back to us [*i.e.*, to Michael and Reifsnyder, R. 76]" would be $3,000 (R. 74), and that the accounts receivable of Central "would be a logical place [from which] to take [the] $3,000 off" (R. 80). Accordingly, it was decided that the amount which Maxi would pay to the trustee for distribution under orders of the court would be $22,982.83, or exactly $3,000 less than the $25,982.83 agreed upon as the amount to be paid by Maxi for Central's net current assets (R. 82-83).

At a subsequent conference with respondent on the same day, April 8, it was decided that the $3,000 "would be made payable to a third party," who would keep for himself a sufficient amount with

which to pay his income tax on the whole $3,000 and turn the balance over to Michael and Reifsnyder, and that the third party would be the defendant Fenner (R. 74-75).[3] It was also agreed that Reifsnyder would write respondent a letter agreeing to take for Central's accounts receivable $3,000 less than they were valued at on the company's books, the purpose of the letter being "to cover up, for the purposes of the record, any question as to why $3,000 less was paid than was shown by the books" (R. 84).[4]

On April 15, 1942 (R. 696), Michael filed with the court a "report of the assets to be acquired" by Central as "an aid to the Court" in considering "the application for fees and allowances by the various parties in interest" (R. 685-687). The report listed Central's accounts receivable at "$20,534.50" and the "Balance" (total assets less total liabilities) at "$23,404.33" (R. 686). Both figures were false ($3,000 too low), Michael testified, the variance being due to "the $3,000 which was diverted" (R. 93-94, 95).

On April 17, 1942, Judge Johnson confirmed the reorganization plan (R. 687-690), and directed the trustee to convey all Central's assets to Maxi after

---

[3] See respondent's unsigned letter to the defendant Davis, dated the following day, in which respondent explained to Davis the plan whereby Michael and Reifsnyder were to get the $3,000, and in which he gave his reasons why, in his opinion, the intermediary should be Fenner rather than "a stranger" (R. 700-702).

[4] Reifsnyder's letter appears at R. 702-704.

"all administration costs and expenses as allowed by this Court, within the limits of the funds as set forth in the Trustee's report filed April 15, 1942 [*supra*]," had been paid (R. 689).

On April 20, 1942, Judge Johnson filed an "Order on Fees and Allowances" (R. 690-696) directing the payment of numerous claims against the bankrupt estate arising from the reorganization proceeding, the total being exactly $23,404.33, the false "Balance" stated in Michael's report of April 15, *supra*.[5] After enumerating the claimants and the amount to be paid to each, the order concluded, "This fully exhausts the funds of $23,404.33 available for fees, allowances and expenses as itemized in the report of the Trustee filed April 15, 1942 [*supra*]" (R. 695-696).

On April 24, 1942, the reorganization plan was consummated in respondent's office by the conveyance of all the assets of the Central Forging Company to the Maxi Company, the issuance of Maxi bonds to creditors of Central, and the issuance by Maxi of several checks, to be described below (R. 97, 99). Fenner had previously agreed to "act as the intermediary in the receiving of the $3,000,"

---

[5] The claimants benefiting by this order were the members of the bondholders' committee of the Central Forging Company and their attorney, Wickersham (R. 691), respondent (R. 692), two special masters (R. 692-693), Michael's predecessor as trustee, Compton, and the latter's attorney (R. 693-694), Michael and Reifsnyder (R. 694-695), and other persons, named in a previous order of the court, whose claims arose from a state receivership proceeding involving the Central Forging Company, which preceded the federal proceeding (R. 691).

and on their way to the April 24 meeting, Fenner, Michael, and Reifsnyder had settled upon $500 as the amount Fenner was to retain from the $3,000 with which to pay his income tax on that amount (R. 99). The $17,000 in cash which Maxi was paying for Central's fixed assets, and which was to be used, according to the reorganization plan, to pay Central's creditors by redeeming the Maxi bonds to be issued to them, had previously been placed in escrow with one Unangst, the cashier of the Catawissa National Bank (R. 18, 478, 703-704). At the April 24 meeting the Maxi Company issued five[6] checks, as follows: (1) a check to respondent in the amount of $5,789.45 (Ex. G-3-D, R. 684), the amount directed to be paid him by Judge Johnson's order allowing fees (R. 102-103, 692); (2) a check to Unangst in the amount of $225 (Ex. G-5, R. 682) for his services as escrow agent (R. 19, 104); (3) a check to Michael in the amount of $8,420.05 (Ex. G-3-A, R. 682), representing his and Reifsnyder's fees and expenses as allowed by Judge Johnson (R. 103);[7] (4) a check to "Michael, Trustee" in the amount of $8,548.33 (Ex. G-3-C, R. 683), representing all the allowances enumerated

[6] A sixth check, in the amount of $2,000 and payable to respondent (Ex. G-3-E, R. 684), was also issued at this time, but it had no connection with the reorganization proceeding (R. 103, 501).

[7] Michael's and Reifsnyder's fees and expenses, as allowed by the court order, actually totaled $9,066.55 (R. 694-695). The figure $8,420.05 evidently resulted from deducting from the total figure the $225 paid to Unangst as an escrow fee (see text, *supra*) and the $421.50 item of prepaid expense referred to at p. 7, *supra*.

in Judge Johnson's order other than those for which specific checks were drawn at this meeting (R. 102), and (5) a check to Fenner in the amount of $3,000 (Ex. G-3-B, R. 683). The total of these five checks was $25,982.83,[8] and, according to Michael's testimony at the trial, represented "the total amount * * * paid by the Maxi Manufacturing Company for the * * * current assets" of Central (R. 104). Michael further testified that, according to the agreement with respondent, the $3,000 check to Fenner was "to be cashed by [Fenner] and the proceeds, less $500, turned over to Mr. Reifsnyder and myself" (R. 103).

Following the meeting, Fenner cashed the $3,000 check at the Catawissa National Bank (R. 20-22, 105-107), kept $500, and turned over to Michael and Reifsnyder the $2,500 balance (R. 107-108), which amount Michael and Reifsnyder subsequently delivered to the defendant Johnson (R. 147-148).

Respondent's defense at the trial was, in substance, that the final agreement between him and Michael and Reifsnyder was, not that the Maxi Company was to pay $26,404.33 for the net current

[8] It will be noted that if $421.50 (the amount of the prepaid expense referred to at p. 7, *supra*, and see note 7, *supra*) is added to this total, the figure $26,404.33 results. The latter figure is the amount which Michael testified should have been listed in his April 15 report to the court as the "balance * * * available to the court for allowances" (*supra*, p. 8; R. 95), and is just $3,000 more than the total amount directed by the court to be paid as fees and allowances (*supra*, p. 9).

assets of Central, but rather that it was to pay the expenses of the reorganization proceeding, with $26,404.33 as the maximum for which it would be liable in that regard. Accordingly, since Judge Johnson's order directed payment of only $23,404.33 as administration expenses, and since Maxi paid that sum for that purpose, it fulfilled its obligation to the letter. (R. 443-444, 462-471.) According to respondent, the $3,000 payment to Michael and Reifsnyder (through Fenner as intermediary) was in the nature of a gratuity (R. 468). Respondent explained that he had no objection to Maxi's making this $3,000 gift to Michael and Reifsnyder because they "had done a good job" (R. 464, 468), because they claimed to need the money for their families (R. 465), and because he recognized that Maxi might have had to pay that much in addition to what, as events turned out, it actually had to pay in the way of administration expenses (R. 463-464).[9] Respondent admitted on cross-examination that the original understanding with Michael and Reifsnyder was that $26,404.33 was to be paid by Maxi *for* Central's net current assets (R. 498), but said that this understanding was later changed, in a telephone conversation with Reifsnyder, to the agreement as just described (R. 500-501). In a contempt proceeding which occurred a

[9] See R. 521-522 for respondent's attempt to explain, on cross-examination, why, if the $3,000 was a gift, it was paid through an intermediary, and why he insisted that the intermediary be some one "on the inside."

year before the trial in this case (R. 507), however; respondent had testified that the $3,000 in question was part of the purchase price for Central's net current assets (R. 510-520). According to his earlier testimony, "it made no difference to me * * * how the money was paid, whether it was paid in one or more checks; we had agreed to pay a certain amount and we were willing to pay that certain amount and my only interest was to receive a proper deed, bill of sale, assignment of accounts, and so forth, vesting absolute title in my clients. As to anything else I wasn't particularly interested" (R. 510).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the evidence fails to support the charges in the indictment that respondent aided and abetted Michael, the trustee of a bankrupt estate, in fraudulently appropriating to his own use $3,000 of the estate and unlawfully transferring $3,000 of its accounts receivable, and that he conspired to commit those offenses.

2. In reversing the judgment of conviction.

REASONS FOR GRANTING THE WRIT

The majority of the Court of Appeals, conceding the "reprehensibility" of the "whole transaction" whereby $3,000 was paid to Michael and Reifsnyder through the intermediary Fenner (R. 835), to which transaction respondent was admittedly a

party; held that the offense was not that of embezzling from a bankrupt estate as charged. The decision, we submit, is clearly erroneous.

The decision proceeds on the following premises, which are either untenable in the light of the Government's evidence or not relevant to the issue:

(1) "* * * the Maxi Company's obligation under the plan was to pay $17,000 through its debenture bonds to the Forging Company's creditors and in addition to pay the expenses of the receivership and reorganization proceedings, as allowed by the District Court, to an amount not exceeding $26,404.33" (R. 833).

(2) "* * * no one other than the Maxi Company had any interest in the $3,000 which it paid to Michael through Fenner. * * * Under the plan of reorganization, * * * the sole rights of the creditors were to receive the debenture bonds which the Maxi Company issued and which were delivered to them. The stockholders had no rights whatever. The Maxi Company was entitled to all of the assets of the Forging Company and its only other obligation was to pay the expenses as allowed by the court. This obligation it fulfilled to the letter" (R. 835).

(3) "* * * since the court did not in fact make allowances in excess of $23,404.33, the Maxi Company's obligation under the plan to pay the expenses was limited to that amount and its pay-

ment to Michael through Fenner of an additional $3,000 was a purely voluntary payment out of its own funds of a sum upon which the estate of the Forging Company had no claim" (R. 835).

1. The majority's view that Maxi's only obligation, in addition to paying $17,000 for the redemption of the bonds it issued to creditors of Central, was to pay the expenses of the reorganization proceeding "to an amount not exceeding $26,404.33" is not only inconsistent with a previous statement in the opinion,[10] but is unsupportable in the light of the Government's evidence. According to the Government's evidence—and the Court of Appeals was required to take that view of the evidence most favorable to the Government, *Glasser* v. *United States*, 315 U. S. 60, 80—it was understood by all concerned that Maxi was to pay $26,404.33 *for Central's net current assets*, and Maxi did pay exactly that amount (the Fenner check constituting $3,000 of it). Only respondent's testimony supports the theory that $26,404.33 was merely a ceiling that was placed on Maxi's obligation to pay the administration expenses (*supra*, pp. 11-12). And even his testimony to that effect was impeached both by the preposterousness of his claim that the $3,000 was a

[10] In the same paragraph of their opinion, the majority had conceded that "There was evidence which would support a finding that the Maxi Company obligated itself to pay $26,404.33, in addition to the $17,000 to which it was committed by the issuance of its debenture bonds in that amount to the Forging Company's creditors" (R. 833).

gift (see point 3, *infra*, pp. 19-20), which the logic of his position compelled him to assert, and by his prior contradictory testimony with which the Government confronted him (*supra*, pp. 12-13). Certainly nothing in any of Judge Johnson's orders supports the view that Maxi's obligation was merely to pay the administration expenses. His order of April 17, 1942, confirming the reorganization plan, directed the trustee to convey Central's assets to Maxi after "all administration costs and expenses as allowed by this Court, within the limits of the funds as set forth in the Trustee's report filed April 15, 1942" had been paid (*supra*, pp. 8-9). But this did not suggest that Maxi was to pay those costs. The clear implication was that the trustee was to pay them from whatever funds were available to him. That it was the trustee's function to pay the costs of administration is clear, not only from the fact that that is the normal procedure, but from the express terms of the reorganization plan filed by the trustee on February 27, 1942, which the court's order of April 17 confirmed. That plan provided that all administration expenses were "to be paid in cash by the Trustee" (*supra*, p. 6).[11]

---

[11] It is true that the Maxi Company did pay some of the administration expenses directly in the sense that it issued special checks covering respondent's, Unangst's, and Michael's and Reifsnyder's fees and allowances in addition to the check to "Michael, Trustee" for the remaining expenses (*supra*, pp. 10-11). The multiplicity of checks, however, was undoubtedly for the purpose of making it difficult to identify the

Moreover, even if the majority were correct in their view that Maxi's obligation under the plan was merely to pay the administration expenses ordered by the court, that fact would not make the $3,000 paid to Michael any the less part of the bankrupt estate. For the court's order was based upon a fraudulent misrepresentation of the value of the net current assets, a misrepresentation which was part of the carefully devised scheme to cover up Michael's defalcation. Consequently, even if it were true that Maxi's obligation was so limited, that fact could not have had the effect of divesting the $3,000 paid to Michael for an equivalent amount of assets of its characteristic as part of the trust property.

2. Assuming, *arguendo*, that the majority are correct in saying that the creditors of the Central Forging Company could have had no conceivable interest in the $3,000 paid to Michael through Fenner, it does not follow that "no one other than the Maxi Company had any interest in" this money.

In the first place, this argument, as the dissenting judge pointed out, overlooks the vital point that a bankrupt estate is "trust property," a "distinct

---

$3,000 Fenner check as part of the consideration for Central's net current assets. Michael's testimony in this connection is significant. He testified that he expected Maxi to issue (in addition, of course, to the $3,000 Fenner check) a single check to him as trustee, with which he "would make disbursements in accordance with orders of the court" (R. 101-102), but that respondent "had the idea that it should be paid over in several checks" (R. 101).

and separate res, corpus or entirety" (R. 837), and that it is "the integrity of the estate which Section 29(a) was designed to protect" (R. 837). Cf. *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, 307; *In re Biro*, 107 F. 2d 386, 387-388 (C.A. 2); *Meagher* v. *United States*, 36 F. 2d 156, 158 (C.A. 9). As the dissenting judge further observed (R. 837-838), "When the arbitrary, unjustified and unexplained $3,000 reduction was made in the total of accounts receivable and the estate received $3,000 less as a result from the Maxi Company, and the Trustee was paid the $3,000 in consideration of that reduction, there was a misappropriation of the assets of the estate."

Moreover, since Judge Johnson utilized the entire $23,404.33 which he presumably was misled into believing was all there was available for the payment of administration expenses, it is unrealistic to ignore the probability that some, at least, of the innocent beneficiaries of the order allowing fees (see note 5, *supra*, p. 9) would have been granted greater allowances if the existence of the concealed $3,000 had been made known to the court. They, plainly, had a higher claim to the $3,000 than the Maxi Company, which received full value for that money. Consequently, the majority's view that "no one other than the Maxi Company had any interest in" the $3,000 is unsupportable under any hypothesis.

We do not concede, however, that the creditors of the Central Forging Company had no interest in the $3,000 in question. True, they had accepted the reorganization plan (which gave secured creditors 20%, and unsecured creditors 5%, of their claims) before the fraud involving the $3,000 was consummated. But, clearly, though their acceptance of the plan of reorganization was undoubtedly irrevocable for all ordinary purposes, it cannot be said to have placed them in a less advantageous position as claimants of this money than the plunderers of the estate and their abettors. It should be noted, moreover, that not all the creditors consented to the reorganization plan, though more than the requisite two-thirds did (R. 687). Equity certainly would recognize the justice of the *dissenters'* claims to the $3,000.

3. Finally, the majority's conclusion that the $3,000 payment to Michael was a mere gratuity on Maxi's part (and no other conclusion can be reached if it was not part of the bankrupt estate) simply does not accord with the facts. Business concerns just do not make gifts in this fashion to individuals. Nor did the Maxi Company do so here, unless Michael's candid, consistent, and documented testimony is entirely rejected, and respondent's self-contradicted, interested, and inherently incredible version of the $3,000 payment (*supra*, pp. 12-13) is accepted. The view that the $3,000

payment was a gratuity ignores the overwhelming evidence adduced by the Government that the entire assets of the Central Forging Company, including the accounts receivable, were transferred to Maxi for a consideration based upon a previously agreed valuation, and that of this consideration and valuation the amount of $3,000 was deducted arbitrarily and secretly and never credited to the funds of the bankrupt estate or made known to the court. Under the theory that the $3,000 was a gift, it is simply not possible to explain why it was felt necessary to pay it through an intermediary, who would pay an income tax on it, nor is it easier to explain what the dissenting judge described as "the arbitrary, unjustified and unexplained $3,000 reduction" in the accounts receivable of the bankrupt estate.

The decision below is erroneous and defeats the manifest purpose of Section 29(a) of the Bankruptcy Act. It holds that that section does not apply where a trustee in bankruptcy, in collusion with the purchaser of the bankrupt's assets, schemes to mislead the court by a fictitious depreciation of the estate, which scheme, when approved by the court presumably in good faith, provides the trustee and his co-conspirators with a surplus of funds not known to the court, which they then may divide and distribute among themselves without an accounting to anyone. If permitted to stand, the decision will establish an easy means of embezzling

from bankrupt estates with impunity, in plain violation of the statutory proscription. This Court's supervisory power over the administration of justice in the federal courts should therefore be exercised, not only to correct a miscarriage of justice in this case but also to remove the harmful precedent the decision creates.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1948.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1948 813255 226